

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

6-1246

FILE: B-186974

DATE: July 30, 1976

MATTER OF: American Can Company

98778

DIGEST:

Protest alleging unlawful provision in solicitation first filed after bid opening is untimely and not for consideration.

On July 16, 1976, American Can Company formally protested any contract awarded by the General Services Administration (GSA) resulting from IFB FPOP-FY-54621-A. The solicitation sought bids for paper products and required that certain minimum percentages of the total weight of the paper stock used in the manufacture of the paper products be of reclaimed paper fiber and of reclaimed fibers from post-consumer waste. The protester alleges that the above specification provision unlawfully limits competition. It is further argued that the specification requirement complained of was improperly adopted because no environmental impact statement was issued.

We note that the requirement for the provision was originally published October 25, 1973 at 38 Fed. Reg. 29470 (1973).

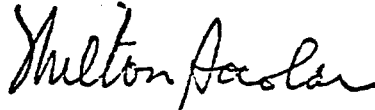
Section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975) requires that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. In this connection, we were advised by GSA that bids were opened at 11:00 A.M. on July 16, 1976. The protest, however, was not received at this Office until 12:01 P.M. which is approximately one hour after the time of bid opening. See 54 Comp. Gen. 29 (1974), 74-2 CPD 27. We believe that it would be unfair to those other bidders who participated in good faith in the procurement to have their bids rejected after exposure of bids because of an alleged defect in the solicitation which was certainly apparent to the protester long before bid opening. Accordingly, the protest is untimely.

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As a matter of information we have taken the position that it is inappropriate for us to consider the substantive issue of whether or not an environmental impact statement should issue because

"* * * whether a Government action is a major one having a significant effect on the human environment is primarily for determination by the agency concerned or, when a negative declaration is challenged, by the courts." Arlington Ridge Civic Association, B-181015, December 23, 1974, 74-2 CPD 367.

Therefore, we find no reason to consider this matter any further.

for 
Paul G. Dembling
General Counsel